No. 80-795

Supreme Court, U. S.
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IN THE

# Supreme Court of the United States

October Term, 1980

MICHAEL HEFFRON, Secretary and Manager of the Minnesota State Agricultural Society Board of Managers, HARVEYDALE MARUSKA, President of the Minnesota State Agricultural Society Board of Managers, the Members of the Board of Managers of the Minnesota Agricultural Society, and WARREN SPANNAUS, Attorney General of the State of Minnesota, individually and in their official capacities,

*Petitioners,*

vs.

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC., and JOSEPH BECA, on behalf of themselves and THE INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS members,

*Respondents.*

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

WARREN SPANNAUS
Attorney General
State of Minnesota
KENT G. HARBISON
Special Assistant
Attorney General
515 Transportation Building
Saint Paul, Minnesota 55155
Telephone: (612) 296-7537
*Attorneys for Petitioners*

224-7633 — Review Publishing Co., 257 E. 6th St., St. Paul, Minn. 55101 — 224-7633

## QUESTION PRESENTED

May the International Society For Krishna Consciousness and its members be exempt, under the First Amendment, from Minnesota State Fair's rule which requires that all persons who solicit money or sell or distribute products or other materials during the annual 12-day fair do so only from a booth or other fixed location on the fairgrounds, when that rule is applied equally to all persons without regard to the content of their literature or products or religious beliefs?

## PARTIES IN PROCEEDINGS IN MINNESOTA SUPREME COURT

Since the issuance of the judgment of the Minnesota Supreme Court there has not been any change in the parties participating in this case. Consequently, the caption of this Petition contains the names of all parties.

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October Term, 1980

No. ———

MICHAEL HEFFRON, Secretary and Manager of the Minnesota State Agricultural Society Board of Managers, HARVEYDALE MARUSKA, President of the Minnesota State Agricultural Society Board of Managers, the Members of the Board of Managers of the Minnesota Agricultural Society, and WARREN SPANNAUS, Attorney General of the State of Minnesota, individually and in their official capacities,

*Petitioners,*

vs.

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC., and JOSEPH BECA, on behalf of themselves and THE INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS members,

*Respondents.*

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

Petitioners (hereinafter "the Minnesota State Fair") respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of the State of Minnesota which reversed the declaration of the Minnesota District Court, Second Judicial District, that Minnesota State Fair rule 6.05, which restricts all fairgrounds' sales, solicitations and literature distribution to a fixed booth location, is constitutional under the First Amendment as applied to respondents International Society For Krishna Consciousness (hereinafter "ISKCON" or "Krishnas").

## OPINIONS BELOW

The Opinion of the Minnesota Supreme Court is not yet reported. A copy of the majority and dissenting opinions are contained in Appendix A, *infra*. The Judgment and Order of the state district court are also unpublished and are set out in Appendix B, *infra*.

## JURISDICTION

The Opinion of the Minnesota Supreme Court was filed on August 18, 1980. In this case, the Minnesota Supreme Court, the highest state court in Minnesota, held that Minnesota State Fair Rule 6.05, which has the force and effect of state law, is invalid as to ISKCON under the First Amendment to the United States Constitution. The jurisdiction of this Court is found in 28 U.S.C.A. § 1257(3).

## LAW IN QUESTION

Rule 6.05 (hereinafter "booth rule") of the Minnesota State Fair provides:

> Sale or distribution of any merchandise, including printed or written material except under license issued [by] the Society [State Fair] and/or from a duly-licensed location shall be a misdemeanor.

The State Fair has the statutory authority to promulgate and enforce such rules under Minn. Stat. § 37.16 (1978). The Minnesota Supreme Court acknowledged that the booth rule has been applied to restrict sales, solicitations and distributions of materials to fixed locations on the fairgrounds. *See*, Minnesota Supreme Court Opinion at A-3 and Stipulation of Facts at para. 16.

## STATEMENT OF THE CASE

This action was commenced on August 24, 1977, challenging the constitutionality of the State Fair booth rule in Ramsey County district court. On August 18, 1978, that court denied ISKCON's motion for a permanent injunction and granted summary judgment to the State Fair.

In essence the rule challenged by ISKCON provides that any person or group seeking to sell, exhibit or distribute materials during the annual Minnesota State Fair must do so only from a fixed location on the fairgrounds. Stipulation of Facts, para. 16. This policy is applied equally to all persons. *Id.* at para. 17. The State Fair leases space in booths and other buildings to such persons on a "first-come, first-served" basis without regard to the content of the materials distributed or sold. *Id.* The State Fair has not discriminated against ISKCON in any

manner and had expressed a willingness to rent booth space to its members. Stipulation of Facts, paras. 22, 23.

The fairgrounds occupies about 125 acres. From 1973-1978 the average attendance at the annual 12-day fair was about 1,320,000. The average week-day attendance has been 115,000, and the average attendance on Saturday and Sunday has been 160,000. The bulk of these persons as well as hundreds of exhibitors, concessionaires and State Fair employees are confined to about one-third of the entire 125 acres. Stipulation of Facts, paras. 20-21.

ISKCON claims to be a religious organization with rights under the First Amendment exempting them from the State Fair space rental policy. At least 40 other groups of religious, political, or journalistic nature have rented fixed booth space for the annual state fair. *See* Michael Heffron Affidavit, para. 10 and Exhibit A attached thereto.

The Krishnas hold a religious tenet which requires them to go into public places to proselytize and solicit funds. Krishna Joseph Beca, however, testified under oath there would be no harm suffered by either himself or ISKCON, if their activities were confined to booth space. Beca Deposition at 57-58.

One day before the beginning of the 1977 Minnesota State Fair, ISKCON and Beca filed their complaint in Ramsey County District Court and moved for a temporary restraining order. No evidence or testimony was received. Since the 1977 Fair was to end shortly, the court issued a Temporary Restraining Order two days after the motion, August 26, 1977. The Order enjoined the enforcement of the State Fair rule except as it applied to "sales" of materials by ISKCON. Thus, in 1977 the Krishnas were still prohibited from "selling or inducing others to purchase" any materials except from a rented fixed location on the fairgrounds.

Approximately 17 to 18 ISKCON members then conducted their solicitations and distributions during five or six days of the 1977 fair. Beca Deposition at 10, 23. The record in the trial court, however, showed that Krishnas had violated the trial court's order against sales outside a booth and had engaged in various deceptive practices. *See* Affidavit of Michael Heffron, July 27, 1978, para. 16, and Affidavits of Elizabeth Ann Murphy, Dwayne Bronk, William Paddock, Michael Gene Krogness and Glen Larson. Generally, these sworn and unrebutted affidavits showed that during the 1977 fair ISKCON members misrepresented their identities and the purposes of their solicitations of funds, solicited money from minors, and engaged in other similar conduct. As noted in some of the foregoing affidavits, one of the common forms of such conduct was the practice of ISKCON members of purporting to offer a fair patron a book, leaflet, flag or similar item as a gift, only to take it back if the recipient declined to make a monetary "donation." *See* Murphy, Paddock and Larson Affidavits, *supra*.

The state district court upheld the booth rule in an Order dated August 18, 1978. Exactly two years later, the Minnesota Supreme Court, by a 5-3 decision, reversed the trial court.

## REASONS FOR GRANTING THE WRIT

### I. THE MAJORITY OPINION OF THE MINNESOTA SUPREME COURT IS IN CONFLICT WITH THE DECISIONS OF SEVERAL FEDERAL COURTS IN ALMOST IDENTICAL CASES AND INCONSISTENT WITH THE FIRST AMENDMENT STANDARDS ESTABLISHED BY THIS COURT.

The 5-3 decision of the Minnesota Supreme Court invalidating the State Fair's booth rule on First Amendment grounds is contrary to recent decisions of several other courts. For example, in at least three other Krishna-State Fair cases federal district courts have rejected the Krishnas' First Amendment claims in sustaining booth rules almost identical to that at issue herein. *International Society For Krishna Consciousness, Inc. v. Barber, et al.*, No. 77-CV-328 (N.D. N.Y., filed August 25, 1980); *Hynes v. Metropolitan Government of Nashville*, 478 F.Supp. 9 (M.D. Tenn. 1979); and *International Society For Krishna Consciousness, Inc. v. Evans*, 440 F.Supp. 414 (S.D. Ohio 1977).

Like the rule at issue in the instant matter, the challenged rule in each of the foregoing cases required all fairgrounds exhibitors or concessionaires to confine their sales and monetary solicitations to a booth or other fixed location. Recognizing that First Amendment rights may be reasonably restricted in the face of significant or compelling countervailing state interests, those courts relied on several findings and conclusions relevant to this case. The state fairs' needs to protect the health and safety of all fairgoers and exhibitors, to preserve order and convenience in congested areas, to give all exhibitors and concessionaires equal access to fair patrons, and to minimize the problems of theft, fraud and misrepre-

sentations of solicitors and vendors were deemed significant. *ISKCON v. Barber, supra,* at 6-7, 17-29; *Hynes v. Metropolitan Government of Nashville, supra,* 478 F.Supp. at 11-12; and *ISKCON v. Evans, supra,* 440 F.Supp. at 423-425.

The size of the fairgrounds, the method of space rental, the number of fairgoers, the number of exhibitors and concessionaires and the limited nature of the fair rules were considered crucial to the inquiry. It is noteworthy that, as described hereinafter, the Minnesota State Fair's booth rule is no more restrictive than the rules in the New York, Tennessee and Ohio fairs, and the Minnesota Fair's attendance and participation statistics are comparable to the largest of those three fairs. *See, ISKCON v. Evans, supra,* at 418 and Minnesota Supreme Court decision at A-6, 7.[1]

In addition to the above-described state fair cases, there recently have been federal court decisions in other contexts which appear to be contrary to the Minnesota Supreme Court's opinion. The court of appeals in *International Society For Krishna Consciousness v. Eaves,* 601 F.2d 809, 828-29 (5th Cir. 1979) sustained that part of an Atlanta airport regulation which limited Krishna monetary solicitations to booths. As was true in the above state fair cases, the Court in *Eaves* concluded that the governmental unit's need to minimize congestion and enhance crowd control was a sub-

[1] It is true, of course, that this Court declined to review the decision of the Seventh Circuit Court of Appeals adverse to the Indiana State Fair in Bowen v. International Society For Krishna Consciousness, 600 F.2d 667 (7th Cir. 1979), *cert. den.*, 100 S.Ct. 448. But, unlike the instant case, the record in the Indiana case suggested that Krishna members had been singled out for punishment, criminal prosecution and harassment. *Id.*, 456 F.Supp. 437, 440 (S.D. Ind. 1978). Not only is such evidence non-existent in this case, it is established that the only remedy used against persons who violate the Minnesota State Fair's rule is expulsion from the fairgrounds. Affidavit of Michael Heffron, dated August 25, 1977, at para. 15.

stantial health and safety interest which outweighed the limited restriction on the Krishnas' claimed right to collect money peripatetically throughout the airport. *Id.* Similarly, a federal district court has upheld a New York City World Trade Center rule which restricts solicitations to fixed areas in the Center's shopping concourse. *International Society For Krishna Consciousness v. McAvey*, 450 F. Supp. 1265 (S.D. N.Y. 1978).

Another example of the divergence among the jurisdictions as to the restrictions which may be placed on sales and solicitations activities is *United States v. Boesewetter*, 463 F.Supp. 370 (D.D.C. 1978). In that case the district court dismissed a criminal prosecution against an individual who had violated a federal regulation which totally prohibited the sale or distribution of newspapers and pamphlets anywhere inside certain park buildings, including the Kennedy Center. The court, however, expressly stated that time, place and manner restrictions would be appropriate in order to respect the rights of competing pamphleteers and solicitors. *Id.* at 373.

As will become more clear hereinafter, the State Fair's booth rule is a limited and reasonable time, place and manner restriction that is applied equally to all persons and, unlike the majority decision of the Minnesota Supreme Court, is consistent with this Court's standards for evaluating First Amendment claims.

## II. THE MINNESOTA SUPREME COURT MISAPPLIED THIS COURT'S FIRST AMENDMENT STANDARDS TO THE STATE FAIR'S BOOTH RULE.

### A. Introduction.

This Court has employed different approaches to the various types of disputes that arise under the First Amendment. For example, measures which regulate the content of a speaker's message are viewed far more harshly than regulations involving a speaker's access to a locale from which to express his views. *Compare Brandenburg v. Ohio*, 395 U.S. 444 (1969) with *Greer v. Spock*, 424 U.S. 828 (1976). Similarly, far stricter standards have been applied to laws and regulations which impose prohibitions on First Amendment activities than to measures which do not effect a total deprivation. *Compare United States v. Robel*, 389 U.S. 258 (1967) with *Cox v. New Hampshire*, 312 U.S. 569 (1941).

It is, therefore, helpful to follow the advice of Mr. Justice Frankfurter in *Niemotko v. Maryland*, and "first set to one side decisions which are apt to mislead rather than assist." 340 U.S. 268, 276 (1951) (Frankfurter, J., concurring). *See also ISKCON v. Evans*, 440 F.Supp. 414 (1977). For that reason it is important to focus on what the State Fair's booth rule does *not* require.

First, the State Fair does not prohibit particular persons or groups from attending the fair and discussing their beliefs in any public area of the fairgrounds. Second, the State Fair rule does not vest officials with any real discretion in ascertaining whether or not Krishnas are entitled to engage in their desired practices at the State Fair. Stipulation at para. 20. Third, the State Fair rule does not restrict *any* activity on the basis of the content of anyone's speech. Fourth, this

case does not involve any abridgment of rights of belief and/or association. Finally, in this case the State Fair has not sought to insulate totally its property from use as a public forum. *See e.g., Chicago Area Military Project v. City of Chicago,* 508 F.2d 921 (7th Cir. 1975), *cert. denied,* 421 U.S. 992. *Cf., Schneider v. State,* 308 U.S. 147 (1939); *Hague v. C.I.O.,* 307 U.S. 496 (1939).

Regulating speech by its content, vesting discretion in state officials in determining what can and cannot be heard, depriving people of rights of equal opportunity in employment because of beliefs and associations are matters of serious First Amendment concern and have been so treated in the cases. However, such considerations are not applicable when the state imposes a reasonable restriction only on the time, place, or manner under which the purported First Amendment activity may be practiced. A time, place or manner regulation is thus necessarily entitled to a greater deference of constitutionality, and indeed this Court has expressly adopted this position:

> A restriction . . . designed to promote the public convenience in the interest of all, and not susceptible to abuses of discriminatory application, cannot be disregarded by the attempted exercise of some civil right which, in other circumstances, would be entitled to protection.

*Cox v. Louisiana,* (Cox I) 379 U.S. 536, 554 (1965).

In light of the limited nature of the State Fair's booth rule and what it does *not* entail, it is stressed that in the instant case the Krishnas are not carrying the banner of a fight against censorship, non-access or discriminatory treatment.

**B. The Booth Rule Serves Significant Governmental Interests And Is A Reasonable Time, Place and Manner Restriction Consistent With First Amendment Standards.**

Even though much of the fairgrounds is a public forum, the booth rule should also be judged as to whether it serves a significant or compelling government interest in a reasonable manner. This test is merely a combination of the following formulations from relevant First Amendment cases:

> We have often approved [time, place and manner] restrictions . . . provided that they are justified *without reference to the content of the regulated speech,* that they serve a *significant governmental interest,* and that in so doing they leave open *ample alternative channels* for communication of the information.

*Va. State Bd. of Pharmacy v. Virginia Citizens Consumer Council,* 425 U.S. 748, 771 (1976) (emphasis added);

> Although American constitutional jurisprudence . . . has been zealous to preserve access to public places for purposes of free speech, the *nature of the forum and the conflicting interests* involved have remained important in determining the degree of protection afforded by the [First] Amendment to the speech in question.

*Lehman v. City of Shaker Heights,* 418 U.S. 298, 303 (1974) (emphasis added);

> If a municipality has authority to *control the use of its public streets for parades or processions,* as it undoubtedly has, it cannot be denied authority to give consideration, *without unfair discrimination, to time, place and manner* in relation to other purposes of the streets.

*Cox v. New Hampshire*, 312 U.S. 569, 574 and 576 (1941) (emphasis added); *See also Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 155 (1969); *Cox v. Louisiana*, 379 U.S. 536 (1965) and the dissenting opinion of the Minnesota Supreme Court at A-12.

It follows that it is a significant governmental interest to adopt rules which will protect the safety, health and convenience of *all* persons who use crowded public and commercial areas for which there may be competing demands. Of course, such rules must be reasonable as to the time, place and manner of the restrictions. Finally, the rule must not be vague, it must be applied equally to all perons, it must not allow the potential for an abuse of discretion by administrators, and it must provide alternative means for exercising free speech and freedom of religion rights. The record in the instant case, as shown by the following, contains facts which meet the above tests.

**1. The Booth Rule Serves Significant Public Interests.**

Several undisputed facts presented to the trial court are relevant to the issue of public interests. For example, the annual Minnesota State Fair is held in a fenced-in area of about 125 acres, with the bulk of activities confined to an area approximately one-third of that size.[2] From 1973-1978 an average of about 1,300,000 persons, excluding concessionaires and exhibitors, have attended each 12-day fair.[3] There are an additional 1,400 exhibitors and concessionaires and their employees who annually exhibit or sell products (including religious, political and journalistic materials) from

[2] Stipulation of Facts, para. 20, and Affidavit of Michael Heffron, para. 3, July 27, 1978.

[3] Stipulation of Facts at para. 21 and Affidavit of Michael Heffron, paras. 4 and 18.

leased booth space.[4] Furthermore, the State Fair must exclude approximately 300-500 concession and exhibit applications each year due to insufficient space.[5] Because of the congested conditions during the annual fair, it is critical to provide speedy emergency health, police and fire services.[6] At the 1978 State Fair there were approximately 40 concessionaire/exhibitors who leased booth space on the fairgrounds to disseminate or sell newspapers and religious and political materials.[7]

Certainly the public interests manifested in the foregoing facts and served by the State Fair's booth rule are as legitimate and significant as those approved by this Court in other cases. In *Murdock v. Pennsylvania*, 319 U.S. 105 (1943) this Court struck down an ordinance which totally proscribed door-to-door solicitation by persons who had not first paid a license fee which was unrelated to the need for the ordinance. But, it was stated that not only was the holding based largely on the arbitrariness of the license fee, but also that the manner in which First Amendment activities are exercised raises problems that can be regulated by police powers if done so reasonably. *Id.* at 110.

In addition, when a proposed activity by one group might conflict with or affect the use of public areas by other citizens, it is proper to consider the public safety and convenience which might be affected by such activity. *Grayned v. Rockford*, 408 U.S. 104, 116-117 (1972) (upheld ordinances which restricted use of public streets for picketing and demonstrations); *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 155 (1969) (applied reasonable time, place and manner restrictions in the face of competing uses); *Cox v. New*

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[4] Stipulation of Facts, para. 19 and Affidavit of Heffron at paras. 10 and 11 and Exhibit "A" thereto.
[5] Stipulation of Facts, para. 18.
[6] Affidavit of Heffron, para. 7. See Argument III(B)(4), infra.
[7] *Id.*, paras. 10 and 11 and Exhibit "A" thereto.

*Hampshire*, 312 U.S. 569, 576 (1941) (considered the need for "proper policing" of Jehovah's Witnesses' solicitations in order to serve public safety and convenience in the use of public areas).

In light of the obvious and uncontroverted demands upon the State Fair for the use of very limited space by both concessionaries/exhibitors and patrons and the problems of providing responsive police, health and safety services in congested areas, surely the interests served by the booth rule are significant public concerns. The claim that roving ISKCON solicitors would not create any congestion problems at an already crowded fair is perhaps appealing on its face but is naive and unrealistic. Beyond the fact that such claim does not really deny the existence of the above-cited significant governmental interests, it also is obvious that on a crowded fairgrounds where there are thousands of people very few roving solicitors, who clearly would stand out because of their being the only group given such a privilege, would attract curious crowds disproportionate to their numbers. Moreover, the mere fact that the annual fair is already crowded is an insufficient reason for the State Fair not to minimize the problems created by crowds. Simply because it presently may be difficult for an ambulance, fire truck or police vehicle to reach parts of the fairgrounds as quickly as they could without any patrons present, it cannot seriously be suggested that the State Fair staff should not attempt to reduce those difficulties in a reasonable manner.

The majority opinion of the Minnesota Supreme Court indeed acknowledges "the importance of the state's undeniable interest in preventing widespread disorder that would surely exist" without the booth rule. Minnesota Supreme Court opinion at A-7. But the Court then states that the proper test

is for the Fair to show that it cannot avoid any disorder by granting an exemption from the rule to the Krishnas. *Id.* But, to grant special favors to certain groups because of an alleged doctrinal basis in that group's underlying philosophy, is to choose between the types of ideas that are allowed to be presented to the public. It is exactly this type of abuse that the First Amendment was designed to avoid. *See, Fowler v. Rhode Island,* 345 U.S. 67 (1953); *Niemotko v. Maryland,* 340 U.S. 268 (1951). ISKCON's request for special dispensation is a request for favoritism and special status and thus cuts against one of the central notions of the First Amendment, the equality of ideas.

**2. Peripatetic Solicitations and Distributions By Krishnas Would Be Unfair To Other Similarly Situated Exhibitors and Concessionaires.**

The Minnesota Supreme Court erroneously found, Opinion at A-7, n. 7, that the practice of Sankirtan by Krishnas necessitates that their sales, solicitations and distributions of materials be done on a roving, or peripatetic, basis throughout all public areas. That finding is contrary to the parties' Stipulation of Facts which simply states that Sankirtan "consists of going out into public places to disseminate or sell religious literature and to solicit contributions. . . ." The record herein merely supports a finding that Krishnas have a religious belief which compels them to go out into public places to solicit funds and distribute religious materials; that finding does not exclude such activities from being carried out from fixed locations in public places.

Furthermore, the record also establishes that, in actual practice, during the 1977 Minnesota State Fair Krishnas "disseminated" flowers, flags, fairgrounds maps and similar objects of no realistic religious significance. Affidavits of Michael Heffron, para. 16; Dwayne Bronk, para. 3; William Paddock, para. 3; and Glen Larson, para. 2. It is obvious not only that such items do not bear any relationship to the Krishnas' religion but they merely represent the initial step in many Krishnas' attempts to deceive prospective purchasers and contributors. *See ISKCON v. Barber, et al.*, No. 77-CV-328 at 17-29 (N.D. N.Y., August 25, 1980).

The error of the Minnesota Supreme Court in finding, without any support in the record, that Sankirtan mandates peripatetic solicitations is compounded by the Court's failure to give a meaningful consideration of the consequences of that finding. *Cf. Lehman v. City of Shaker Heights*, 418 U.S. 298, 304 (1974); *Cox v. Louisiana*, 379 U.S. 536, 554-55 (1965). If the lower court's decision is allowed to stand, it would be just as reasonable under the First Amendment for the scores of political candidates at the Minnesota State Fair to roam the fairgrounds buttonholding patrons and distributing campaign stickers and leaflets;[8] or for an unknown number of journalists to sell or pass out newspapers and magazines in the same manner; or for a wide variety of religious groups ranging from the Unification Church and the Church of Scientology to Lutherans, Jehovah's Witnesses and Baptists to do the same things. At recent annual fairs there have been many organizations with First Amendment rights as well

[8] In Wolin v. Port of New York Authority, 392 F.2d 83, 85 (2d Cir. 1968), *cert. denied*, 393 U.S. 940, the court held that the port authority could not absolutely exclude "political expression" from its terminal. This holding, of course, also recognizes that political candidates have well established First Amendment rights.

established as those of ISKCON, and the number doubtlessly would multiply if the fair is made available for roving solicitations. Affidavit of Heffron at para. 10 and Exhibit "A". What makes the solicitation of money more traditional for ISKCON than any other religion?

The difficulties of providing traditional police power protection by the State Fair would, of course, be greatly magnified if all religious, political and press organizations were permitted to solicit money and distribute materials randomly on the fairgrounds. It is largely for that reason that the booth rule constitutes a reasonable accommodation of all interests.

The Minnesota State Fair is a limited resource. There is an intense desire on the part of a great many vendors and solicitors to take advantage of the State Fair during the limited period when the State Fair is in session. The most reasonable, the most fair, the most neutral, the most ordered manner by which these competing interests can be accommodated is by the establishment of the booth system. The booth system, rented as it is on a first-come, first-served basis, assures that no group, political, religious, or otherwise, will receive a favored position, and it guarantees that all groups wishing to disseminate ideas, sell products or solicit funds will have the opportunity to do so without interruption.

The booth system inherently reduces the possibility for one organization to obtain any unfair advantage over another, both by giving all groups the same opportunities to contact an equal number of patrons and by prohibiting them from obstructing or interfering with others engaged in similar activities. In addition to assuring that there can be no favoritism on the part of the state officials towards any group,

the policy also assures that any given ideology, religion or political view will not have the appearance of state sanction. *See Lehman v. Shaker Heights*, 418 U.S. 298 (1974). The Minnesota Supreme Court's majority opinion, however, is destructive of these values and legitimate First Amendment goals.

### 3. For First Amendment Purposes, The Nature, Purpose and Lay-out of the Minnesota State Fair Set It Apart From Open Parks, Transient Facilities And Other Traditional Public Forums.

Another error of the Minnesota Supreme Court's majority opinion is that it did not truly consider the "nature of the place" and whether "the manner of [proposed] expression is basically incompatible with the normal activity of a particular place at a particular time." *Grayned v. Rockford*, 408 U.S. 104, 116 (1972). *See also Wolin v. Port of New York Authority, supra* at 89, where the court noted the importance of the "function" of the place proposed for unregulated free speech activity. The purpose and function of most state fairs has been appropriately defined by the court in *ISKCON v. Evans*, 440 F.Supp. 414, 424-25 (S.D. Ohio 1977):

> . . . to house an agricultural and industrial exposition and to support educational and competitive junior activities. At this time the fairgrounds are *not on a constitutional plane with an open-air park or street corner* "immemorially . . . held in trust for the use of the public, and, time out of mind, . . . used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Hague v. Committee*

*for Industrial Organization*, 307 U.S. 496, 555, 59 S.Ct. 954, 964, 83 L.Ed. 1423 (1939).
(Emphasis added).[9]

The statement by the court in *ISKCON v. State Fair of Texas*, 461 F.Supp. 719, 721 (N.D. Tex. 1978) that a fair is a "congeries of hawkers, vendors of wares and services, and purveyors of ideas . . ." does not alter the purpose of the Minnesota fair. Furthermore, any hawking, vending or purveying are clearly confined to fixed locations.

Certainly, the nature and purpose of the State Fair are significantly different from those of streets, airports, bus terminals and similar facilities which people use primarily merely to travel from one place to another. Persons who travel through transportation terminals, for example, are not likely to stay there long and, thus, probably would not be approached by more than one Krishna solicitor before their exit for their destinations. In addition, the fairgrounds certainly is not comparable to a public park or similar area traditionally used by a wide variety of public speakers. *Compare Wolin v. Port Authority of New York*, *supra*, and *ISKCON v. McAvey*, *supra*. Similarly, persons who are solicited by door-to-door salespersons or religious advocates can easily close their doors at any time or refuse to answer them. *Compare Murdock v. Pennsylvania*, *supra*. But, a person who pays the admission fee and enters the enclosed Minnesota fairgrounds naturally does so with the purpose of attending the fair and with far less control over unwanted solicitations.

Admittedly, patrons have the freedom to reject any Krishna solicitation and walk away, but the only certain means that

[9] *Compare* Minn. Stat. §§ 37.01 and 37.15 (1978), which provide that the purpose of the annual Minnesota fair is to promote agriculture, horticulture, stockbreeding, manufacturing, mining and mechanical arts and sciences.

patrons have for avoiding repeated solicitations by the same or other ISKCON members as they roam the fairgrounds would be to leave the fair itself. The Minnesota Supreme Court's decision realistically would give thousands of unsupportive fairgoers two choices: 1) leave the fairgrounds to avoid roving solicitations; or 2) repeatedly reject the unwanted Krishna solicitations or other requests, flags, books or flowers pinned on their clothing. Such choices simply are unreasonable, particularly if several political and religious groups engage in similar practices. *Compare Lehman v. City of Shaker Heights*, 418 U.S. 298 (1974).

## III. THE RECORD HEREIN CLEARLY SHOWS FRAUDULENT CONDUCT AND VIOLATIONS OF THE 1977 TRO BY THE KRISHNAS.

In regard to the Krishnas' desire to conduct their activities at will throughout the fairgrounds there is another important fact in the instant case which is relevant both to a balancing of interests and to the appropriateness of equitable relief. That is, there is uncontroverted evidence of deceptions, fraud and other misconduct by Krishnas during the 1977 annual fair.[10]

The fair staff received 234 unsworn complaints,[11] some of which indicated that ISKCON members not only violated the restraining order by *selling* articles outside a rented booth

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[10] The Ramsey County District Court had initially granted ISKCON a temporary restraining order permitting it to distribute materials and collect donations but denying its members the right to "sell" any items without a booth. Thus, 17 or 18 ISKCON members solicited throughout the fairgrounds during the 1977 fair. Deposition of Joseph Beca at 10 and 23.

[11] *See* Heffron Affidavit, para. 16.

but also misrepresented their identities and the purposes[12] of their requests for funds and solicited minors. In addition, in support of their motion for summary judgment the State Fair submitted 5 sworn affidavits from persons who attended the 1977 fair and personally observed the misconduct by ISKCON members. *See* Affidavits of Elizabeth Murphy, Dwayne Bronk, William Paddock, Michael Krogness, and Glen Larson, submitted to the district court as Exhibits B, C, D, E and F respectively. These affidavits, which were unrebutted, show that ISKCON members *sold* articles in violation of the 1977 restraining order, retrieved "gifts" if no donations were given by fair patrons, persisted in soliciting obviously unwilling listeners and identified themselves as teachers and members of a Minnesota state agency. *Compare Va. State Board of Pharmacy v. Va. Citizens Consumer Council, supra* at 771 (false or misleading speech is not protected).

A revealing insight into the Krishnas' real sales and solicitations techniques is found in the recent case of *ISKCON v. Barber, et al.*, No. 77-CV-328 (N.D. N.Y., Aug. 25, 1980). Approximately 13 pages of that court's opinion is devoted to describing the fraudulent practices and misrepresentations of Krishnas at the Syracuse fair from 1977-1979. The following are but a few examples: 1) In introducing themselves to fair patrons Krishnas were instructed to slur the word "Krishna" to make it sound like "Christian;" 2) they would pin flowers, flags and "Keep on Truckin'" buttons on fairgoers without their consent; 3) coerce youths and handicapped persons into giving substantial monetary donations; and 4)

[12] Some of the complaints showed that ISKCON members told fairgoers that they were representatives of the Department of Natural Resources or the State Fair or were collecting funds for agricultural schools or needy children. Heffron Affidavit, para. 16.

misrepresent purposes for which donations would be used. As the court noted, "One of the only things that the Krishnas did not do at the State Fairs was to discuss their religion [with] fair goers." *Id.* at 28.

The foregoing facts are wholly consistent with the Krishna activities at the 1977 Minnesota State Fair as established by the record before the Minnesota Supreme Court.

It has been suggested that the remedy for such misconduct is to prosecute the individual offenders. But, that answer is too simplistic and impractical, especially in light of the fact that the Krishna misrepresentations and coercions appear to be systematic. The difficulties of policing consumer fraud, thefts and assaults by roving vendors or hawkers would be enormous. There is no doubt, of course, that such misconduct already occurs on the fairgrounds, but it is unquestionably much easier to trace, investigate and prosecute offenders when the incident occurs at an easily identifiable fixed location with a known employer or owner than it is when the offender is merely a face who vanishes in the crowd and whose employer is unknown.[13] Even the mere presence of vendors in open areas of the fairgrounds realistically is likely to attract crowds of people curious to see "what is happening." Such occurrences surely would create further impediments for emergency services vehicles.

The unique difficulties for apprehending and prosecuting a peripatetic vendor or solicitor on a fairgrounds crowded with thousands of people were underscored by the Court in *Barber, supra*:

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[13] Trying to apprehend a thief or someone guilty of consumer fraud during a 12-day fair with no apparent connection to a registered booth operator in a crowded fairgrounds is literally impossible. The harm to the public in such situations is clear.

> The [booth] regulation is a reasonable means to combat widespread fraud that cannot be effectively checked by the criminal justice system. . . . Plaintiffs have made little, if any, attempt to control its members or to bring these incidents [of fraud and deception] to a halt. Quite the contrary, the Krishnas have condoned such practices by using experienced 'thieves' to teach its newer members how to solicit money from the public in exactly the same way . . .

*Id.* at 38 (emphasis added).

Consequently, the evidence in this and other cases shows that many Krishnas are not innocent disciples who are being prevented from spreading their religious beliefs by oppressive and discriminatory bureaucrats. They are, instead, often experienced deceivers who are seeking a special monetary advantage over other fairgrounds concessionaires and exhibitors, many of whom have equally strong First Amendment claims. It was error for the Minnesota Supreme Court to grant such advantage.

## CONCLUSION

Thus, the petition for certiorari should be granted to correct the result in this case so that the State Fair's booth rule may be applied equally to all participants in the annual fair.

Dated: November 13, 1980.

Respectfully submitted,

WARREN SPANNAUS
Attorney General
State of Minnesota
KENT G. HARBISON
Special Assistant
Attorney General
515 Transportation Building
Saint Paul, Minnesota 55155
Telephone: (612) 296-7537
*Attorneys for Petitioners*

# APPENDIX A

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No. 335 (1979)
Ramsey County
INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC., et al.,

Appellants,

49526

vs.

MICHAEL HEFFRON, Secretary and Manager of the Minnesota State Agricultural Society Board of Managers, et al.,

Respondents.

Endorsed
Filed August 18, 1980
John McCarthy, Clerk
Minnesota Supreme Court

Peterson, J. Dissenting, Todd, J., Sheran, C.J., and Scott, J. Took no part, Amdahl, J.

SYLLABUS

Minnesota State Fair Rule 6.05, which is interpreted by the Minnesota state agricultural society to restrict to fixed locations on the fairgrounds all sales and distributions of merchandise, is unconstitutional as applied to members of a religious society who wish to distribute and sell religious literature and solicit donations for religious purposes throughout the public areas of the fairgrounds.

Defendants are to be enjoined from enforcing Rule 6.05 against members of plaintiff International Society for Krishna Consciousness, Inc.

Reversed and remanded with directions.

Heard, considered, and decided by the court en banc.

## OPINION

PETERSON, Justice.

Plaintiffs International Society for Krishna Consciousness, Inc. (ISKCON), a religious organization, and Joseph Beca, a member of ISKCON, challenge on this appeal the trial court's refusal to declare Minnesota State Fair Rule 6.05 unconstitutional and enjoin permanently the rule's enforcement. We conclude that enforcement of Rule 6.05 against members of ISKCON would violate their constitutionally guaranteed right to free exercise of religion.

Plaintiff ISKCON maintains temples and schools throughout the world and is organized under the laws of this state as a nonprofit religious corporation. Members of ISKCON espouse the doctrines of Krishna Consciousness, a branch of the Hindu religion. Krishna Consciousness requires its followers to perform an evangelical ritual known as Sankirtan. The performance of Sankirtan consists of going out into public places to distribute or sell religious literature and to solicit donations for the support of Krishna Consciousness. The declared purposes of Sankirtan are to spread the doctrines of Krishna Consciousness, to attract new members to ISKCON, and to gain financial support for ISKCON's religious and educational activities.[1]

Plaintiff Joseph Beca is an ISKCON priest and the head of ISKCON's Minneapolis temple. Beca and other members of ISKCON wish to practice Sankirtan at the Minnesota state fair, an event which takes place from late August through

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[1] This case is presented to us upon stipulated facts. The parties' stipulation provides in part: "In performing Sankirtan, ISKCON devotees often greet members of the public by giving them flowers or small American flags, but for the purpose of this lawsuit they seek only to solicit contributions for their literature and their religious activities, and not for these greeting gifts. They do not seek to dance, chant, or to engage in any other potentially disruptive or disorderly conduct."

early September of each year. Rule 6.05, as promulgated by the Minnesota state agricultural society (the society), a governmental body which has control of the state fairgrounds and responsibility for administration of the state fair, prohibits the sale or distribution on the fairgrounds of "any merchandise including printed or written material except under a license issued [by] the Society and/or from a duly licensed location."[2] The state fair's policy in applying Rule 6.05 has been to restrict all sales and distributions of materials at the fair to fixed locations on the fairgrounds. In most instances these fixed locations take the form of booths or buildings rented from the society by sellers and distributors.[3] Plaintiff

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[2] Minn. Stat. § 37.16 (1978) authorizes the society to make "all bylaws, ordinances, and rules, not inconsistent with law, which it may deem necessary or proper for the government of the fairgrounds and all fairs to be held thereon, and for the protection, health, safety, and comfort of the public thereon" and provides that "[t]he violation of a bylaw, rule, or ordinance promulgated by the society is a misdemeanor."

The president and secretary of the society are authorized to appoint "special constables or deputies * * * for the regulation of the Minnesota state fairgrounds" who 'shall have and exercise upon the [state fairgrounds] all the power and authority of peace officers and, in addition thereto, may, within these limits, without warrant, arrest any person found violating any law of the state, or any rule, regulation, bylaw, or ordinance of the society, and may summarily remove the persons and property of such offenders from the grounds and take them before any court of competent jurisdiction to be dealt with according to law." § 37.20.

[3] The board of managers of the society, the members of which are defendants in this action, is vested with the management and control of the affairs of the society. § 37.04, subd. 1. One of the society's duties is to hold an annual fair upon the fairgrounds. § 37.15.

Defendant Michael Heffron, as secretary of the board of managers of the society and manager of the state fair, has responsibility for supervising all activities at the state fair and for implementing and enforcing all state fair rules and regulations.

Defendant Harveydale Maruska, as president of the board of managers of the society, has responsibility along with defendant Heffron for appointing peace officers to enforce all state laws and all rules, regulations, bylaws, and ordinances of the society on the fairgrounds.

Defendant Warren Spannaus, the attorney general of the State of Minnesota, directs a member of his staff to prosecute those arrested at the fairgrounds for violations of state laws or of rules, regulations, bylaws, and ordinances of the society.

ISKCON has been notified that its members who practice Sankirtan at the fair must confine all distributions and sales of religious literature and solicitations of donations to a rented booth.

Members of ISKCON are unwilling to have their practice of Sankirtan so restricted. They wish to distribute and sell religious literature and solicit donations throughout the areas of the fairgrounds that are open to the public. In August 1977, plaintiffs, on behalf of themselves and all members of ISKCON, commenced this action under 42 U.S.C. § 1983 (1979) and Minn. Stat. § 555.01 (1978) for a judgment declaring that Rule 6.05 violates the First and Fourteenth Amendments of the United States Constitution. Plaintiffs also asked the trial court to enjoin defendant state officials from enforcing Rule 6.05 against members of ISKCON who practice Sankirtan in public areas of the fairgrounds.

The trial court issued a temporary restraining order prohibiting defendants from preventing members of ISKCON from proselytizing, distributing religious literature, or soliciting donations for religious purposes in public areas of the fairgrounds during the 1977 state fair. The trial court, however, enjoined members of ISKCON from "selling or inducing others to purchase" religious literature or items at any location within the fairgrounds other than one rented for that purpose. The parties thereafter made cross-motions for summary judgment based upon stipulated facts. By an order dated August 18, 1978, the trial court granted defendant's

motion for summary judgment and denied plaintiffs' motion.[4] This appeal ensued.

The question presented for our decision is whether it is constitutionally permissible for defendants to apply Rule 6.05 so as to require the members of ISKCON who practice Sankirtan at the state fair confine their distribution, sales, and solicitation activities to a rented booth. The First Amendment of the United States Constitution forbids the enactment of laws prohibiting the free exercise of religion.[5] The time, place, and manner of religious activity may, however, be subject to reasonable and nondiscriminatory regulation if necessary to further an important governmental interest. *Cantwell v. Connecticut*, 310 U.S. 296, 303-04 (1940). Defendants concede that Sankirtan is a religious activity entitled to First Amend-

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[4] The trial court's order provides:

IT IS HEREBY ORDERED that plaintiffs' motion for summary judgment is in all respects denied. Defendants' motion for summary judgment is in all respects granted.

IT IS FURTHER ORDERED that plaintiffs are prohibited from

1) Engaging in any distribution of materials (e.g., books, flowers, flags, incense, artifacts, etc.) throughout the fairgrounds, except from rented booth space;

2) Engaging in any sales or solicitation for monetary donations throughout the fairgrounds, except from rented booth space;

However, plaintiffs are permitted to:

Roam throughout those areas of the fairgrounds generally open to the public for the purpose of discussing with others their religious beliefs.

[5] "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." U.S. Const. amend. I. "The Fourteenth Amendment has rendered the legislatures or the states as incompetent as Congress to enact such laws." *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940).

ment protection.[6] They argue that Rule 6.05, as applied by them to members of ISKCON, does not offend the First Amendment because it is a permissible regulation of the place and manner of the practice of Sankirtan.

Plaintiffs do not claim that Rule 6.05 has been applied to members of ISKCON in a discriminatory fashion. What is at issue here is the reasonableness of the rule as a place and manner regulation. The application to an individual of a governmental regulation which incidentally restricts him in the exercise of a First Amendment right is permissible only if the regulation "furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest." *International Society for Krishna Consciousness, Inc. v. Conlisk*, 374 F.Supp. 1010, 1015 (N.D.Ill. 1973) (quoting *United States v. O'Brien*, 391 U.S. 367, 377 (1968). The party urging that application of the regulation be upheld has the burden of proving that these criteria are met. *Elrod v. Burns*, 427 U.S. 347, 362 (1976). Defendants have not sustained that burden in this case.

Defendants assert that the state's interest in maintaining order at the state fair is sufficiently important to justify the application of Rule 6.05 to members of ISKCON. The state fairgrounds comprise approximately 125 acres. An average

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[6] Proselytism, the distribution or sale of religious literature, and the solicitation of donations by members of a religious organization who seek to attract new members and to generate financial support for the organization have long been considered activities protected by the First Amendment. *See Murdock v. Pennsylvania*, 319 U.S. 105, 110-11 (1943); *Cantwell v. Connecticut*, 310 U.S. at 305. For cases treating Sankirtan specifically as a bona fide religious practice, *see, e.g., International Society for Krishna Consciousness, Inc. v. Bowen*, 456 F.Supp. 437, 441-42 (S.D. Ind. 1978), *aff'd*, 600 F.2d 667 (7th Cir. 1979), and cases cited therein.

of 115,000 persons visit the fairgrounds each weekday while the state fair is in progress. On Saturdays and Sundays daily attendance averages 160,000. Approximately 1,400 exhibitors and concessionaires rented space at the 1977 and 1978 state fairs. We agree that these facts suggest a situation in which the state's interest in maintaining order is substantial. We have no doubt that Rule 6.05's requirement that all vendors, exhibitors, and concessionaires perform their functions at fixed locations furthers that interest significantly.

What defendants must demonstrate, however, is not the importance of the state's undeniable interest in preventing the widespread disorder that would surely exist if no regulation such as Rule 6.05 were in effect. Rather, they must establish the importance of the state's interest in avoiding whatever disorder is likely to result from granting members of ISKCON an exemption from compliance with the rule.[7]

It is fundamental that First Amendment rights may be restricted only for weighty reasons. We note that members of ISKCON are not prohibited from proselytizing throughout public areas of the fairgrounds. Some disorder is bound to attend this activity. We are not convinced that allowing ISKCON members to also distribute religious literature and accept money throughout public areas of the fairgrounds

[7] If Sankirtan is to be practiced properly, the various activities included in the practice of Sankirtan must be performed in a peripatetic manner. Members of ISKCON therefore have a special claim to an exemption from Rule 6.05 on free exercise grounds. Commercial vendors of literature can make no similar claim.

Defendants argue that the facts as stipulated by the parties do not establish that Krishna Consciousness requires its followers to perform all of the activities comprising Sankirtan in a peripatetic manner. We recognize that in deciding this case we are limited by the parties' stipulation. We believe, however, that the peripatetic nature of Sankirtan is easily inferrable from the parties' explanation in their stipulation that the ritual is performed by "going out into public places."

would cause additional disruption sufficient to justify confining those activities to a booth.[8]

Even if we assume the importance of the state's interest in preventing the disorder that will result from allowing members of ISKCON to distribute or sell religious literature and receive donations in public areas of the fairgrounds, we are not persuaded that application of Rule 6.05 to members of ISKCON is essential to the furtherance of that interest. The state's interest can be adequately served by means less restrictive of First Amendment rights. Conduct that tends to create disorder on the fairgrounds may be specifically prohibited.

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[8] During oral argument in October 1979, defendant suggested an additional interest as justification for applying Rule 6.05 to members of ISKCON: the state's interest in protecting the privacy of fairgoers. This interest is insufficient as long as Sankirtan is practiced in such a way that fairgoers who wish to avoid it are able to do so. The United States Supreme Court "has not generally allowed government to suppress speech [or, presumably, other activity protected by the First Amendment] solely to protect unwilling listeners from 'offensive expression unless substantial privacy interests have been invaded. * * * The 'privacy' interests of unwilling listeners are strongest in the home * * *. In public places an individual's privacy interests in avoiding offensive communications are generally thought insubstantial unless the person is deemed a member of a 'captive audience,' either because the person is literally not free to leave without great burden * * * or because the person is in a place where one cannot readily avoid exposure to the unwanted communication." L. Tribe, *American Constitutional Law*, 677, 677-78 n. 13 (1978).

In *Farmer v. Moses*, 232 F.Supp. 154, 162 (S.D.N.Y. 1964), the court considered the privacy rights of visitors to the New York World's Fair and stated: "[T]hose of us who pay the regular admission fee and attend the Fair cannot be totally insulated from our fellows, nor can we expect to be shielded from expressions or ideas which are unanticipated and unsolicited. An individual's right of privacy is of practical necessity limited by the rights of others when he leaves his home and ventures forth into public areas, even those which he must pay to enter."

> [People may be prevented] from blocking sidewalks, obstructing traffic, littering streets, committing assaults, or engaging in countless other forms of antisocial conduct. Such restraints on a solicitor's manner of conduct are characterized as after the fact prosecution, rather than a prior restraint on conduct. This type of sanction *after* the event assures consideration of the particular circumstances of the situation. Therefore, [a regulation should be aimed] at the *act* of obstruction itself rather than prohibiting solicitations on public sidewalks based on its desire to prevent obstruction and provide for the free flow of traffic.

Jones, "Solicitations-Charitable and Religious," 31 Baylor L. Rev. 53, 57 (1979). If the number of persons distributing and selling religious literature and receiving donations throughout the public areas of the fairgrounds becomes unmanageably large, a regulation to limit their number might be justified.[9] A place regulation less restrictive than Rule 6.05 might also be appropriate. For example, in *International Society for Krishna Consciousness, Inc. v. McAvey*, 450 F.Supp. 1265 (S.D.N.Y. 1978), the court refused to enjoin regulations establishing 10 areas at the World Trade Center in New York City within which only one ISKCON member at a time could

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[9] In connection with this we note that the parties have stipulated that "ISKCON, while unwilling to confine its religious activities to a booth, has indicated its willingness to submit to the regulation of its members in their circulation throughout the fairgrounds to proselytize, distribute, and sell literature, and solicit contributions."

solicit and prohibiting solicitations within 15 feet of certain designated places.[10]

Although we are limited by the record in this case, we recognize that an additional concern of defendants may involve the manner in which some members of ISKCON are reputed to practice Sankirtan. Like the problem of maintain-order, this problem can be solved by means less restrictive than confining ISKCON members' distribution, sales, and solicitation activities to a booth. Persons claiming to be members of ISKCON may be required to establish their identity and authority to act on ISKCON's behalf before being permitted to practice Sankirtan throughout the fairgrounds. *Cantwell v. Connecticut*, 310 U.S. 296, 306 (1940). Criminal and civil actions are available to remedy abuses such as fraud and battery in individual cases. *See International Society for Krishna Consciousness, Inc. v. Bowen*, 600 F.2d 667, 669-70 (7th Cir. 1979), *cert. den.*, 48 U.S.L.W. 3351 (1979).

In *Bowen*, the United States Court of Appeals for the Seventh Circuit affirmed the district court's order enjoining Indiana state fair officials from enforcing against members of ISKCON a policy of prohibiting peripatetic solicitation on the fairgrounds. We share the cogent expression of the First Amendment principle stated in these closing remarks of the court of appeals opinion (600 F.2d at 670-71):

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[10] The regulations upheld in *International Society for Krishna Consciousness, Inc. v. McAvey*, 450 F.Supp. 1265 (S.D.N.Y. 1978), are offered here only as an example. We do not intend to suggest that the same regulations would be appropriate at the Minnesota state fair. Regulations of the time, place, and manner of protected activity must be tailored to the forum in which such activity takes place. The state fair is not equivalent in character to the World Trade Center. Nor is it equivalent to an airport. *See, e.g., International Society for Krishna Consciousness, Inc. v. Eaves*, 601 F.2d 809 (5th Cir. 1979) (upholding a regulation requiring that the receipt of money by ISKCON members practicing Sankirtan at the Atlanta airport take place only at a booth).

> [W]e are not unmindful, as anyone cannot be who has travelled through a major airport facility in recent years, that practitioners of Sankirtan have been regarded as annoying and often downright irritating by those they approach. It is not, however, the cases in which the auditor is in agreement with that which is being expressed which reach the courts under the rubric of the First Amendment. Distaste for what is being expressed, and often absolute revulsion, appear to be the hallmarks of the exercise of First Amendment rights and probably are the necessary contexts in which the preservation of those rights can be firmly assured.

The order of the trial court is reversed and remanded with directions that the trial court amend its order, in conformity with this opinion, to enjoin defendants from enforcing Rule 6.05 against members of ISKCON who wish to practice Sankirtan at the state fair.[11]

Reversed and remanded with directions.

TODD, Justice (dissenting in part).

I respectfully dissent in part from the majority opinion because, in my view, the portion of Minnesota State Fair Rule 6.05 which limits the sale of materials and collection of funds to a rented booth constitutes a reasonable time, place, and manner restriction which may constitutionally be applied to plaintiff International Society for Krishna Consciousness, Inc. (ISKCON).

The majority recognizes that religious activity may be subject to reasonable and nondiscriminatory time, place, and

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[11] Since this writing, an opinion has been published in which the Supreme Court of Colorado, in a case virtually identical on its facts to this case, reached the same result as we reach here. *See International Society for Krishna Consciousness, Inc. v. Colorado State Fair and Industrial Exposition Commission*, —— Colo. ——, 610 P.2d 486 (1980).

manner restrictions. In evaluating the validity of this type of restriction, a court must determine whether the regulation furthers a substantial governmental interest which has no relation to the content of the first amendment expression involved. Additionally, the restriction on the first amendment activity must be no greater than is necessary to further that governmental interest. *United States v. O'Brien*, 391 U.S. 367, 377 (1968). An application of this test requires the balancing of the competing interests involved and a consideration of the nature of the forum. *Lehman v. City of Shaker Heights*, 418 U.S. 298, 302-303 (1974); *Grayned v. Rockford*, 408 U.S. 104, 115 (1972). In his concurring opinion in the case of *Niemotko v. Maryland*, 340 U.S. 268 (1951), Mr. Justice Frankfurter summarized the four questions which have been considered by the United States Supreme Court in balancing competing governmental and first amendment interests. They are: (1) What is the interest deemed to require the regulation of speech (or other first amendment activity)? (2) What is the method used to achieve such ends as a consequence of which public speech is constrained or barred? (3) What mode of speech is regulated? and (4) Where does the speaking which is regulated take place? 340 U.S. at 282; *see also, Intern. Society for Krishna Consciousness v. Evans*, 440 F. Supp. 414 (S.D. Ohio 1977).

The restriction under consideration in this case, Rule 6.05, as applied, requires that the activities of distribution and sale of literature and the solicitation and accepting of donations be confined to a rented booth. The majority concludes that Rule 6.05, in its entirety, may not constitutionally be applied to the religious activities of members of ISKCON because a substantial governmental interest for the restriction has not been shown and/or because the governmental interests in-

volved may be satisfied through less restrictive alternatives. However, in reaching this conclusion, the majority does not consider separately each activity which is restricted by the rule; namely, distribution, solicitation, sale, and collection of funds. Instead, the rule is analyzed as restricting a single form of activity. In my view, this constitutes an erroneous evaluation of the rule. Each activity which is sought to be regulated may serve a governmental interest to a greater or lesser degree and/or may serve a different governmental interest. Additionally, each component of the rule may have a different and/or greater or lesser impact on first amendment activity. Thus, in the balance, some of the restrictions may constitute reasonable time, place, and manner regulations while others may not.

I agree with the majority's conclusion that the portions of the rule which serve to restrict the activities of solicitation and distribution of religious literature may not validly be applied to the members of ISKCON. As was noted by the majority, Rule 6.05 does not seek to regulate proselytism by ISKCON members. There is no basis in the record for distinguishing the effect of proselytism from that of solicitation and distribution of religious literature on the claimed governmental interests involved herein. The state contends that the limitation of solicitation and distribution of literature to a rented booth serves a substantial state interest in maintaining public order and minimizing crowd confusion. However, it would appear that the acts of solicitation and distribution have no greater impact on the public order than does the act of proselytism. All three acts merely involve the communication of ideas. In fact, solicitation may be viewed as one form of proseslytism. Solicitation is an act, the purpose of which is to obtain support for the religion involved except that the

solicitor urges financial support rather than support for religious beliefs. The distribution of religious literature also constitutes a form of proselytism through the spreading of religious beliefs by means of written words rather than oral communications. The distribution of literature may have a lesser impact on order than oral proselytism because it may take less time. Additionally, since large amounts of literature are already collected by Fair patrons, the distribution of religious literature by ISKCON members does not have any great impact on any state concern for litter and the like. Thus, since the state expresses no substantial interest in regulating proselytism, it cannot validly claim to have any greater interest in regulating solicitation and distribution.

Therefore, these restrictions may not be justified as reasonable time, place, and manner restrictions since the acts of proselytism, solicitation, and distribution of religious literature are equally protected first amendment activities in this case. All three activities are religious activities which are required of ISKCON members. In fact, as plaintiffs urged at oral argument, these activities constitute the most important and central aspects of the Sankirtan ritual.

However, a different conclusion is required with respect to the regulation of the sales activities of and the collection of funds by members of ISKCON. Again, the state claims that the restriction of these activities to a booth serves a legitimate state interest in minimizing crowd confusion. The regulation serves this interest in a different way and to a greater extent than does the regulation of solicitation and distribution. Sales and collection activities engender additional confusion beyond that caused by solicitation and distribution because they involve acts of exchanging articles for money, fumbling for and dropping money, making change, etc. *See Intern. Soc.*

*for Krishna Consciousness v. Eaves,* 601 F.2d 809 (5th Cir. 1979). While these activities are not incompatible with other ongoing activities at the fairgrounds, they do serve to augment an already existing crowd control problem. The substantiality of the state's interest in this regard is obvious. The crowd at the fairgrounds is concentrated in about one third of the 125-acre fairgrounds. The average daily crowd is in excess of 150,000 people. Yet, the mere recitation of numbers from the stipulation does not portray the situation. Because of the large number of Fair patrons walking in the fairgrounds, there is confusion and congestion throughout the lanes of pedestrian traffic. Sales and collection can only serve to compound this problem. In determining that the state's interest in this regard is not substantial, the majority appears only to focus on the impact of ISKCON's activities on this problem. What the majority seems to forget is that its ruling today will allow for others engaged in first amendment activity to be excepted from the "booth rule." As plaintiffs conceded at oral argument, they stand on equal footing with other religious and political groups entitled to first amendment protection. The effect of unrestricted sales and collection on the crowd control problem at the Minnesota State Fair may, thus, readily be seen.[1]

Specifically with respect to the activities of members of ISKCON, the restriction of its sales and collection activities to a booth also serves a substantial and legitimate state interest in protecting Fair patrons from fraud, misrepresentation, and other acts of misconduct. At the 1977 Minnesota State

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[1] *See Intern. Soc. for Krishna Consciousness v. Eaves,* 601 F. 2d 809 (5th Cir. 1979), *Edwards v. Maryland State Fair and Agricultural Society,* 476 F. Supp. 153 (D. Md. 1979), *Hynes v. Metropolitan Government of Nashville and Davidson County,* 478 F. Supp. 9 (M. D. Tenn. 1979), *Int'l. Soc., Krishna Con., Inc. v. McAvey,* 450 F. Supp. 1265 (S. D. N. Y. 1978), *Inter. Soc. for Krishna Consciousness v. Evans,* 440 F. Supp. 414 (S. D. Ohio 1977).

Fair, ISKCON members were permitted by court order to distribute materials and collect donations but were denied the right to sell items away from a booth. As a result of ISKCON activity at this Fair, the Fair Staff received 234 complaints, some of which indicated that ISKCON members violated the court order by selling items outside of a rental booth under the guise of collecting donations. These complaints also show that members of ISKCON misrepresented their identities and purposes when requesting funds[2] and also solicited minors. In support of its motion for summary judgment, the state submitted affidavits which verified this misconduct. By restricting the sales and collections activities of ISKCON members to a rented booth, the state's interest in protecting fairgoers from such acts of misconduct would be served because such a rule would require ISKCON members to clearly identify themselves and their purpose and would enable the state to adequately police their activities to ensure that the members are not engaged in such acts of misconduct.[3]

The method of regulation in this case is impartial and nondiscriminatory. The rule is carefully drawn so that Fair officials can exercise no discretion when confining collection and sales activities to a booth. Fair officials cannot arbitrarily

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[2] The complaints indicated that ISKCON members stated to fairgoers that they were representing the Department of Natural Resources or the State Fair or were collecting funds for needy children or agricultural schools.

[3] In footnote 8 of its opinion, the majority alludes to the claimed state interest in protecting the privacy of fairgoers and suggests that this interest is never relevant in the context of a state fair, citing *Farmer v. Moses*, 232 F. Supp. 154 (S. D. N. Y. 1964). While I find that this claimed interest is not substantially served by the regulation of sales and collection in this case, I cannot agree that the privacy interests of fairgoers may never be balanced against the interests of those engaged in first amendment activities in determining the reasonableness of a time, place, and manner regulation. *See Hynes v. Metropolitan Government of Nashville and Davidson County*, 478 F. Supp. 9 (M. D. Tenn. 1979), *Int'l. Soc., Krishna Con., Inc. v. McAvey*, 450 F. Supp. 1265 (S. D. N. Y. 1978).

determine that some exhibitors are free to roam the fairgrounds while others are not. Nor is there any discretion given in the determination of who is entitled to rent booth space. Booths at the Fair are rented on a first-come, first-serve basis. Furthermore, the regulation is only minimally restrictive. It does not serve to prohibit any first amendment activity. The rule only limits that activity to a rented booth. Finally, the regulation of sales and collection only restricts non-communicative aspects of any exhibitor's activity. It could not be more content neutral.

Thus, when the rule and the state's substantial interests in its enforcement are weighed against ISKCON's interests in this case, the reasonableness of the rule as a time, place, and manner regulation becomes apparent. Members of ISKCON have an undeniably protected interest in engaging in acts of sales and collection of funds since these are acts which are required as a part of the Sankirtan ritual. However, as plaintiffs stated at oral argument, these activities do not constitute the most central aspects of the ritual as do distribution of literature and proselytism. Thus, the regulation of sales and collection has a lesser impact on the religious activities of ISKCON members than would the regulation of distribution, proselytism, etc. Furthermore, the impact of the regulation on ISKCON activities is not great since the regulation is merely restrictive rather than prohibitive. Contrary to the statement in the majority opinion, there is nothing in the record which establishes that ISKCON members are required to perform any and all aspects of the Sankirtan ritual in a peripatetic manner. Therefore, although the regulation of sales and collection has some impact on ISKCON's religious activities, the impact is not great when compared with the substantial state interests served by the rule.

The majority concludes that even if the state has a substantial interest in enforcing its rule against ISKCON mem-

bers, these interests may be served through less restrictive alternatives and, thus, the rule may not be upheld as reasonable. The majority suggests that the state's interests may be served through prohibitions of specific acts of misconduct, limitations on the numbers of those selling materials and collecting funds throughout the fairgrounds, requirements concerning identification of ISKCON members, and through the bringing of civil and criminal actions for fraud and battery. However, in the context of the State Fair, these suggested alternatives could not viably be implemented and would only serve to increase the existing crowd control problems. All of the suggested alternatives would require Fair officials to police, in an individualized manner, specific acts of misconduct. The ability to police such activities is severely restricted if not made impossible because the fairgrounds is a large, overly-crowded area. Furthermore, the enforcing of a partial ban would entail the checking of credentials and other similar acts which would increase crowd confusion and congestion rather than ameliorate it. Additionally, all of the less restrictive alternatives would only serve to frustrate the legitimate state interest of promulgating a rule which is effective and easily enforceable. Thus, I cannot conclude that the restriction of sales and collection to a rented booth is anything less than a reasonable time, place, and manner regulation.

For the foregoing reasons, I would uphold Rule 6.05 to the extent that it restricts the sales of materials and the collection of funds to a rented booth.

SHERAN, Chief Justice (dissenting).

I agree with Mr. Justice Todd.

SCOTT, Justice (dissenting).

I join in the dissent of Justice Todd.

AMDAHL, J., not having been a member of this court at the time of the argument and submission, took no part in the consideration or decision of this case.

# APPENDIX B

STATE OF MINNESOTA
County of Ramsey

DISTRICT COURT
Second Judicial District

File No. 421843

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC., and JOSEPH BECA, on behalf of themselves and all INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS members,

Plaintiffs,

vs.

MICHAEL HEFFRON, Secretary and Manager of the Minnesota State Agricultural Society Board of Managers, HARVEYDALE MARUSKA, President of the Minnesota State Agricultural Society Board of Managers, The Members of the Board of Managers of the Minnesota Agricultural Society, and WARREN SPANNAUS, Attorney General of the State of Minnesota, individually and in their official capacities,

Defendants.

## ORDER

The above-entitled matter came duly on for hearing before the undersigned, The Honorable J. Jerome Plunkett, Judge of Ramsey County District Court, at Special Term on August 3, 1978, upon plaintiffs' and defendants' cross motions for summary judgment. James A. Payne appeared as attorney for plaintiffs. Kent G. Harbison, Special Assistant Attorney General, and William P. Marshall, Special Assistant Attorney General, appeared as attorneys for defendants.

Upon the oral argument of counsel, the memoranda and attached affidavits submitted by plaintiffs and defendants, respectively, and upon all of the files and records of the proceedings herein,

IT IS HEREBY ORDERED that plaintiffs' motion for summary judgment is in all respects denied. Defendants' motion for summary judgment is in all respects granted.

IT IS FURTHER ORDERED that plaintiffs are prohibited from:

1) Engaging in any distribution of materials (e.g., books, flowers, flags, incense, artifacts, etc.) throughout the fairgrounds, except from rented booth space;

2) Engaging in any sales or solicitation for monetary donations throughout the fairgrounds, except from rented booth space;

However, plaintiffs are permitted to:

Roam throughout those areas of the fairgrounds generally open to the public for the purpose of discussing with others their religious beliefs.

There is hereto attached a memorandum which is a part of this order.

J. JEROME PLUNKETT
Judge of District Court

Dated: This 18th day of August, 1978.

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MEMORANDUM

The issue presented in this case is one of first impression in the State of Minnesota.

The facts in this case are stipulated by counsel. The Defendant Agricultural Society, which operates the State Fair in Minnesota, has a Rule 6.05 which prohibits the sale or distribution of any merchandise, including printed or written

material, except under a license issued by the society and from a duly licensed location within the fairgrounds. Minnesota Statute 37.16 is the authority under which the Agricultural Society has promulgated said rule.

The plaintiffs contend that Rule 6.05 is unconstitutionally invalid as it applies to them. The defendants contend that said rule is a reasonable limitation upon the plaintiffs and others in using the grounds at the State Fair.

The issue presented is one of free speech and the exercise of the religious rights of the plaintiffs. The plaintiffs contend that their religious belief, known as Sankirtan, consists of going out into public places to disseminate or sell religious literature and to solicit contributions to support their cause. Rule 6.05 would limit the plaintiffs to the exercise of its rights to "booth" space as is required of all exhibitors at the State Fair. The constitutional question is a close one and the Court can only find Rule 6.05 to be valid if it concludes that said rule is reasonable as to time and place as it applies to the plaintiffs.

It appears that the Federal District Court in Ohio in 1977 in the case of *ISKCON v. Evans*, 440 F.Supp. 414 (S.D. Ohio, 1977), dealt with facts almost identical to the present case. The Ohio Fair Board had a rule similar to Rule 6.05 which restricted plaintiffs' activities to booth space at the Ohio State Fair. The Federal Court held that the state's interest in providing all fair goers and concessionaires with adequate and equal access to each other and in providing a minimum of congestion on the fairgrounds was a valid constitutional limitation upon the plaintiffs. This Court is impressed by the Federal Court's decision in Ohio and believes that the rationale of said case and its holding should be applicable here.

In Minnesota there are over 1400 exhibitors at the State Fair seeking to communicate various information. Some form

of time, place and manner restriction is clearly required if the free speech rights of each of these exhibitors are to be protected. In addition the public has a right of access to the several communications which must be protected as well.

The Court, therefore, has denied the plaintiffs' motion for summary judgment and has granted the defendants' motion for summary judgment, and has entered its aforesaid order in this case.

J. JEROME PLUNKETT
Judge of District Court

Dated: This 18th day of August, 1978.